



# INDUSTRY CIRCULAR

DEPARTMENT OF  
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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## DEFINITION OF THE TERM "BRAND"

Proprietors of distilled spirits plants, bonded wine cellars, taxpaid wine bottling houses; brewers; wholesale liquor dealers; importers; retail liquor dealers; and others concerned:

Purpose. The purpose of this circular is to inform you of a forthcoming ATF ruling concerning the meaning of the term "brand" as used in 27 CFR 6.83, 6.85, and 6.91. These sections are part of ATF's recently adopted trade practice regulations under the Federal Alcohol Administration Act, T.D. ATF-74, effective November 24, 1980. The ATF ruling will read as follows:

"The Bureau of Alcohol, Tobacco and Firearms has received a number of inquiries regarding the meaning of the term 'brand' as used in 27 CFR 6.83, 6.85, and 6.91. The term 'brand' is used in these regulations to differentiate between various wine, distilled spirits, and malt beverage products. Each of these regulatory sections permits industry members to furnish certain things of value to retailers subject to dollar or quantity limitations which are established on a per-brand basis.

"Section 5(b)(3) of the Federal Alcohol Administration Act (27 U.S.C. 205(b)(3)) makes it unlawful, under certain jurisdictional limitations, for producers, importers, or wholesalers of distilled spirits, wine, or malt beverages to induce any retailer to purchase products to the exclusion, in whole or in part, of products sold or offered for sale by others in interstate or foreign commerce, by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value, except as permitted by regulation.

"Regulations appearing at 27 CFR 6.83, 6.85, and 6.91 provide exceptions from section 5(b)(3) for product displays, retail advertising specialties, and product samples, respectively.

"Section 6.83 provides an exception from section 5(b) (3) for product displays. Product displays are wine racks, bins, barrels, casks, shelving and the like from which distilled spirits, wine, or malt beverages are displayed and sold. To qualify for the exception provided by section 6.83, the product display must bear conspicuous and substantial advertising matter. Further, an industry member may furnish product displays to a retailer which are valued at not more than \$100 per brand in use at any one time.

"Section 6.85 provides an exception from section 5(b) (3) for retailer advertising specialties such as trays, coasters, mats, menu cards, meal checks, napkins, etc., which bear advertising matter and which are primarily of value to the retailer as point of sale advertising matter. The value of all retailer advertising specialties furnished by an industry member to a retailer may not exceed \$50 per brand per calendar year.

"Section 6.91 provides an exception to section 5(b) (3) for samples of wine, distilled spirits, or malt beverages which an industry member may furnish to a retailer. Industry members may furnish a sample to a retailer who has not previously purchased that brand from that industry member. Quantity limitations are placed on the size of samples which may be furnished to retailers.

"HELD, in sections 6.83, 6.85, and 6.91, the term 'brand' refers to differences in brand name of a product, differences in nature of a product, or differences in color or design of a label. Thus, examples of different brands would be products having a different: brand name; class, type, or kind designation; appellation of origin (wine); viticultural area (wine); vintage date (wine); age (distilled spirits); proof (distilled spirits); or label design or color. Differences in packaging such as a different style, type, or size of container are not considered different brands."

Inquiries. Inquiries regarding this circular should refer to its number and be addressed to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC, 20226.

  
Director